IN THE

# Supreme Court of the United States.

No. 29.—December Term, 1869.

ST. LOUIS PUBLIC SCHOOLS, *Plaintiff in Error,*

vs.

ISAAC WALKER and PATRICK RYANS, *Defendants in Error.*

Argument for Defendants.

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## Argument for Defendants.

The land sued for was "*rightfully claimed*" by Joseph Brazeau when the act of June 13, 1812, was passed.

His concession and survey, under Delassus, gave him an inchoate title under the French and Spanish governments, and such a title is property, both under the French and Spanish governments, and under that of the United States.—(9 Peters' Rep., p. 145, Chouteau's Heirs vs. United States; Idem, p. 133, Delassus vs. United States.) Under both governments they made a property that was exclusively possessible and enjoyable—that was vendible by private and judicial sales—that was descendable and devisable. They made a rightful claim for a perfect grant from the former governments, and therefore this government became subject to the same claim, both under the express terms of the treaty of purchase and of the law of nations. This court has repeatedly so decided. But it also has as clearly decided that, although subject to the obligation of the claim, the government's power over it was sovereign, and that it could rightfully pre-

scribe the mode and manner for obtaining a complete title and the terms and conditions thereof. It began early to fulfill its duty to the inhabitants of the purchase relative to their property claims. Beginning with the act of March 2, 1805, it has ever since, till the present time, been enacting modes and ways in discharge of this duty. Of these various claims it was not at first fully informed. But, as its information increased, it increased the proper facilities. But, down to 1832, it had not provided for cases without an actual possession or cultivation under the former governments. And, therefore, although Brazeau filed a notice of this claim and the plat and the evidences thereof among the first under the act of 1805, yet he could not get a favorable decision for it until the organization of the new board under the act of July 9, 1832. Nor can it be justly said that there had been any neglect of its prosecution. It is true that it was not prosecuted in the District Court of Missouri under the act of 1824. It is equally true, it is believed, that a court, although endowed with the full powers of this district court, was not a suitable tribunal to hear and decide upon these French and Spanish claims. Hence but few of these claimants made use of it, and government found it necessary, or best, to resort again to the tribunal of a commission, subject, however, to the action of Congress upon its reports.

This commission reheard Brazeau's claim and recommended it for confirmation. It was confirmed by the act of July 4, 1836.

This was an admission and a final decision by Congress that this land was "rightfully claimed" by Brazeau, by a tribunal and authority supreme and paramount.

By this confirmation Brazeau obtained a *prima facie* title in fee to this land. It is valid against all others until a better be shown.

The plaintiff asserts a better and a valid one in effect for the following reasons, to-wit:

*First*—Because, upon the passage of the act of June 13, 1812, there was no land within the lines of the outboundary, provided for by said act, except that of confirmed claims—of commons and public domain free from all individual rights and claims.

*Second*—That by the acts of 1812, 1824, and 1831, the plaintiff became entitled to so much of this public domain as did not exceed 1-20th of all the land within said lines, and was not reserved for military purposes.

*Third*—That under said rights there had been carved out of this public domain this land in suit, and the same had been vested in the plaintiff.

If the first proposition be true, we will not contest the others in behalf of Brazeau.

But it is not true, and its assertion is a begging of the whole question between the plaintiff and Brazeau.

The act of June 13, 1812, did not repeal so much of the acts of February and March, 1811, as reserved from sale the lands of the claims filed before the old board according to law, but not confirmed by said board, until the final decision of Congress thereon.

Nor was that act the final decision of Congress thereon, meant in said act of 1811. On the contrary, the 8th section of said act substitutes the recorder of land titles for the old board, with the duty and power to take up these claims and others, and investigate and report on them.

This he did do, and under his report Congress confirmed many of these claims by the acts of 1814 and 1816.

The plaintiff raised this question in the case of Hammond vs. St. Louis Public Schools, 8 Mo. Rep., pp. 74–5, and it was decided against them, and on the ground that Congress had the power, and by said act retained the power, to pass on these claims. The Schools took subject to the exercise of this power, and government could exercise it so long as the subject-matter was vested in it. This court has made like decisions.

The nature of the claims necessitated it.

The practice of the government has conformed to it.

The famous Stoddard tract and the majority of the common fields belonging to St. Louis, have been investigated and confirmed since the act of 1812.

And section 2d of this act of June 13, 1812, itself, admits that there might be "rightful claims" not yet confirmed within the out-boundary lines, and excludes the lands of such from this reservation, as well as lands owned.

The reply attempted to this is, that its reservation in behalf of this claim ceased in May, 1829, and was not again under protection until July, 1832, when the new board was organized to resume the investigation of such of these claims as remained undisposed of, and that during this period it became barred under the act of 1824, and its extensions; that it was thus barred in 1831, when the government relinquished its right and title to the land designed for the support of schools in section two of said act of 1812; that this bar subjected this land to the operation of said act of 1812 for the Schools, as completely as if it had been vacant and free from every private claim on June 13th, 1812, and that by said act of 1831 its legal title became vested out of the United States for the plaintiff.

We respectfully submit that this proposition is untenable, utterly.

FIRSTLY.

Because the bar of a statute of limitation is no evidence that the claim barred was not rightful. That is not the reason of the bar, under a statute of limitations, but the reason is founded on the public policy that parties and courts should be freed from the litigation of claims not prosecuted within a reasonable time—this to be fixed by the legislature.

We have already undertaken to show that there had not been remissness in this claim; that the delay of a final decision was owing rather to a failure in government

to provide the proper opportunity therefor. But we admit that it did become barred, as asserted by the plaintiff, but not with the consequences asserted by it.

SECONDLY.

There is no room for speculating what was the effect of the bar on this claim under the act of 1824. The act expressly declares the effect. It is, that the lands of claims barred shall become "public lands," but does not go farther and say "and shall be reserved for the support of schools," but goes farther and says, and shall be subject to the same disposition as other public lands in their land district. And what disposition was this?

It was that of being subject to sale for the benefit of the improvement of the country and the public treasury, as in the case of sales generally, and we assert the proposition confidently, that, admitting Brazeau's claim "rightful," then, although forever barred under the act of 1824, or abandoned or released in terms by Brazeau, its land would not be embraced by the reservation, and its setting apart for the Schools by the surveyor-general, and even with the approval of all the officers of the Land Department, would be a transaction without the authority of law, and subject to the will and pleasure of the government.

But this bar was raised, and by competent authority, to which the plaintiff, as well as Brazeau, was subject. Congress had often made these bars with regard to these claims, and as often raised them, as it had an absolute right to do.—(See sec. 3 of act of April 21, 1806, p. 391, and sec. 5 of act of March 3, 1807, p. 441 of vol. 2 of U. S. Statutes at Large.)

After this, under the act of 1832, this claim was re-examined, and Congress confirmed it. Under the confirmation an official and approved survey of the land was made for Brazeau in 1837. Now, suppose that this land was of the kind that came within the reservation for the Schools, and

as claimed by the plaintiff, upon a remark of the judge delivering the opinion of this court in the case of Kissell vs. St. Louis Public Schools, 18 How. U. S. Rep., p, 25, that the School claims under the act of 1812 were, after the act of 1831, like *confirmed* Spanish claims, still, under the decisions of this court, the Brazeau title is better than that of the plaintiff; for, the lands that the Schools might finally get were, when Brazeau's claim was confirmed, and surveyed for him, so uncertain in limits and location that it was impossible to specify them, and the land confirmed to Brazeau was not *necessarily* a portion of them, and, further still, *need* not have been a *portion* of them.

Now, if this be true, then the principle of the decisions in the cases of Menard's Heirs vs. Massey, 8 How. U. S. Rep., pp. 308 and 310, and 18 Idem, p. 473, LeDoux et al. vs. Black et al., is directly applicable to this case; and, therefore, since Congress vested in Brazeau the title to this land, by reason of a prior equity, before it was ascertained to be of the lands reserved for the Schools, and was set apart for them by the survey of the surveyor, and especially because, in addition thereto, the ratio of the vacant lands allowed the Schools might have been obtained elsewhere, the title of the Brazeau confirmation was the better.

We do not understand that the title of Brazeau has not, in principle, the benefit of the doctrine of the relation of title back from the time of its inception to its investment.

It had a lawful beginning equal to an entry under our system.

There was a consideration for it to the former government that, in those times, with that government, was usual, and regarded as valuable—pioneer fidelity, and services in the colonization and improvement of the King's domain. It is as valuable a consideration to government as money. Our government acknowledges the like in its pre-emption and its homestead laws.

What we understand this court as meaning, when it says that the title begins with the confirmation, is, that it shall not have relation back so as to cut out titles actually and lawfully vested by the government in others. In doing justice to these claimants it must not do injustice to others—innocent persons, who equally and properly relied upon the government, and whom the government had vested with its title. But the government compensates for this by giving land in like quantity, to *be selected* by the confirmee himself, from any public lands for sale. This carries out the original object, and thus does substantial justice.

Section 2 of the act of July 4th, 1836, admits, in principle, the application of the doctrine, of the relation of titles to the cases confirmed by said act, by providing that it shall not apply to lands of lawful locations, or, surveyed and sold, situate within those confirmed. But, for this, Papin's patent would have to yield; and any claim to the land other than that of right and title from the government, does yield, as, for instance, the claim of a party under a long possession, and, perhaps, a pre-emption claim.

In the case of Ham vs. State of Missouri, the title had vested in the State of Missouri before the confirmation, and the act of confirmation only relinquished to the confirmee what title the government then had. It had none. In the case of Barry vs. Gamble the claim had been barred from 1808 to 1824, and, during the time of the bar, the title of Gamble became vested under the government, according to law.

In the case of LeBois vs. Bramall, and of Mackay vs. Dillon, the controversy was with the title of the commons. But this title was granted under section first of the act of June 13th, 1812, and if the claims of LeBois and of Mackay had any location within the limits of the commons, they were cut off during their bar from 1829 to 1833, by the act of 1831, in behalf of those commons, fol-

lowed up by a United States survey thereof, and before the act of July 4th, 1836, was passed.

If it be true, as we contend it is, that the record shows that Brazeau's claim to this land was rightful when the act of June 13, 1812, was passed, then the plaintiff's title falls, and there is an end to this suit without the defendants proving their title.

Still, however, we would show, and have decided, that the Papin title is a valid and a paramount title. When Papin made his entry for this land, paid for it, and obtained his patent for it, there was nothing apparent that this land was not duly in market for sale.

It had been sectionized as public land. The lands of its district had been duly proclaimed for sale. It was in condition for a lawful entry, unless reserved from sale. It is said to have been reserved from sale in two ways:

*First*—Because it was within the corporate limits of St. Louis and the out-boundary lines.

*Second*—Because it was within Brazeau's claim.

With regard to the first, the record, and the cases referred to, show that it was not till about 1840 that any authority in the premises had concluded that the act of 1812 referred to the town of St. Louis as incorporated in 1809, and not to the old Spanish town.

The difference would be this: that if the act of 1812 referred to the old Spanish town, then this land would not be within its limits. The Land Department, for the purpose of operating under this act, concluded, in 1839, to consider the act as referring to the town of 1809.—(See Land Commissioner's letter, p. 41 of printed record.)

The out-boundary provided for by the act of 1812 was not made until 1840.

So far, then, as these acts made a reservation, this reservation was not only not notorious, but not officially or, in fact, known when Papin made his entry, paid his money, and obtained a patent—and both were matters of judicial controversy down to the case of Kissell vs. The

Schools. There was no direct law for it. The cases of 13 Pet., Wilcox vs. Jackson, and 18 How., Kissell vs. The Schools, were those of pre-emptions, and no patents had been issued. Besides, where is the law that forbids an entry of land within the limits of a town, if sectionized, and offered for sale without such an exception? Among the exceptions in the act of 1811 there is not this.

As to the reservation in favor of Brazeau's claim, all the cases, directly or by implication, admit that, had it been under the bar of the act of 1824, when the Papin patent issued, it would have been valid. Apparently it was at this time under this bar. Its protection from the bar was concealed in a private act for the relief of one Phineas Underwood, and other purposes. This was considered a private act, and was not published among the public acts of Congress, and was not known to the bar or the bench of Missouri until after the decision of the case of Sarpy vs. Papin, 7 Mo. Rep., decided in 18—.

But this reservation was of land whose location and limits were uncertain. The confirmation was according to the concession. Where this land lay, until the United States survey thereof for Brazeau was made in 1837, was not known to the Land Department. It had no certain and positive location.

When Papin's entry was made and his patent obtained, the situation then was this:

It was uncertain whether this land was situate within the town of St. Louis, meant in the act of 1812, or would lie within the lines of the out-boundary to be run under the acts of 1812 and 1824.

The location of Brazeau's claim was vague and uncertain, and could not be rendered certain except through the instrumentality of the surveyor's department.

Here, then, was universal vagueness and uncertainty.

What, then, prevents the principle of the case of Le-Doux et al. vs. Black et al., 18 How. U. S. Rep., p. 473, from operating?

If we inquire how this patent of Papin has been regarded by *all* the officers of the Land Department, we shall find that it has always been recognized and never been interfered with until this late unadvised and unauthorized act of Surveyor-General Cuddy.

No complaint was made against it down to the time of the survey for Brazeau, in 1837, under his confirmation.

The surveyor was instructed, in making this survey, to note its interferences with other lands before confirmed or sold.

In his report of this survey, made in 1837, among other interferences he noted that of the land patented to Papin. (See p. 37 of printed record.)

This survey was duly reported to the General Land Office in Washington. Under this survey, according to section two of the act of July 4, 1836, a certificate was issued to Brazeau's representatives authorizing the taking of other public lands for these and others excepted out of his claim.—(See p. 38, printed record.)

In 1857 the Land Commissioner, at Washington, sent to the surveyor-eneral, at St. Louis, a list of the entries made in the township of this land, and in this list was that of Papin intact and without objection.—(See p. 47, printed record.)

Mr. Cuddy was transferred from his newspaper office, in St. Louis, to the office of surveyor-general at St. Louis, after March 4, 1861. Without consulting at the General Land Office in Washington, he, June 10, 1861, assigned this land to the plaintiff.

Afterwards, the Schools having applied for more, he very sensibly concluded to ask the advice of the Land Commissioner relative to them, as advised to do by the letter of said commissioner of June 28, 1860.—(See p. 48 of printed record.)

And, strange to say, he in this communication set forth this land of Papin's patent, although he had assigned it to the Schools. In the Land Commissioner's reply, dated

September 7, 1861, he refrains from giving any opinion of the act of assigning this land to the Schools, but he says that Mr. Cuddy had done it under his own responsibility, and it must be subject to any legal claims under Papin and others.—(See p. 53 of printed record.)

Thus it is shown that no proper authority ever treated this land as school land, but all proper authorities treated it as land sold to Papin, and within the land rightfully claimed by Brazeau, but protected by section two of act of 1836. And, down to this day, the judiciary has treated this land as vested under Papin's patent, whether questioned by the confirmation to Devolsey or to Brazeau, or the claim of the Schools. Between the decisions of the case of Stoddard vs. Chambers, 2 How., p. ——, and of Menard's Heirs vs. Massey, 8 How., p. 308, there seems to some to be a conflict.

Yet these decisions were made by the same judges and within a short period of time of each other.

We think the difference manifest. Located lands excepted from the confirmation must have been public lands whose sale was authorized by law. The land located under the New Madrid certificate in that case had not been sectionized, and therefore not offered for sale. It was also within the land of the claim of Stoddard, which was reserved from sale.

Therefore the location was not according to or in conformity to the law authorizing such locations.

It was a gift, and the donee must take it on its terms.

The kind of locations meant by the act is indicated by Judge Catron in his opinion in the case of LeBois vs. Bramall, 4 How., p. 463, being locations by special acts of Congress. The kind is also indicated by the Land Department as including lands located by surveys under prior confirmations. A case of this kind is noted in the said survey for Brazeau.

But Papin's case comes under a different class—a class described as land before "*surveyed and sold.*"

Now, the land of Papin's patent was surveyed when it was sold to him. It was land, therefore, as a matter of fact, "*surveyed and sold*" to him before July 4, 1836. It is immaterial whether the sale was at the time technically authorized. If it were, then it would need no protection. This provision of the act was to cover and protect unauthorized sales, or it is meaningless and useless. There had been, through the ignorance and confusion relative to these matters, unauthorized sales. The purchasers had innocently bought. The proper government officers had taken their entries and accepted their money, and government still retains and uses it. Justice required their protection, and it was given upon the recommendation of those who were well informed in these matters.—~~(See letter of Col. Biddle.)~~

A. Todd
&
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Counsel for Defts.

# SUPREME COURT OF THE UNITED STATES.

(*No.* 29 .)

PATRICK RYAN AND OTHERS,
*Defendants in Error,*

Ads.

THE BOARD OF PRESIDENT AND DIRECTORS OF THE ST. LOUIS PUBLIC SCHOOLS,
*Plaintiff in Error.*

## STATEMENT OF THE CASE,

BY THE DEFENDANTS IN ERROR.

The plaintiff in error instituted this suit in the St. Louis Land Court, in the State of Missouri, to recover from the defendants in error the possession of certain lands, situate in the city of St. Louis in said State.

The answer of the defendants in error put in issue the right of the plaintiff to said possession.

The case was tried before said court, and the verdict and judgment of the court were for said defendants.

Afterwards said plaintiff carried the case to the Supreme Court of said State by writ of error, where, after argument, said judgment was affirmed. And afterwards said plaintiff brought the case into this court by writ of error, praying for a reversal of said judgment for reasons assigned.

The facts of this case, as presented on said trial by said plaintiff, were, in substance, as follows, to-wit:

The Act of Congress of June 13, 1812, (p. 748, vol. 2, U. S. Stats. at Large,) whereby the lands of the Town of St. Louis, included in the general survey thereof, not rightfully owned or claimed by private persons, or held as commons, or reserved for military purposes, were reserved for the support of the schools of said town, not, however, to exceed in quantity one-twentieth of the lands of such survey.

The Act of Congress of January 27, 1831, (p. 435 of vol. 4 of U. S. Stat. at Large,) whereby the United States relinquished all their right, title and interest in the lands reserved for the support of schools in the State of Missouri by the said Act of June 13, 1812.

By appropriate legislation the plaintiff became empowered and entitled to realize this donation in behalf of the ancient Town of St. Louis.

In pursuance of its power, the plaintiff made demand of the Surveyor General at St. Louis to designate and set apart to it a parcel of land in the southern part of the city of St. Louis, on the ground that it was embraced within said reservation, and said Surveyor, in pursuance of said demand, without referring to the Commissioner of the General Land Office, but upon his own responsibility (see p. 110 of record), did on June 3, 1861, set it apart for the plaintiff by his survey thereof for plaintiff, numbered 407 of the series of St. Louis lands. (See p. 13 of record.) By this proceeding plaintiff obtained color of title to said land.

The land in controversy in this suit is a part of said parcel of land thus set apart to plaintiff.

It was set apart to plaintiff before this suit was begun.

The defendants admitted for said trial that they were in possession thereof when the suit was begun. This suit was begun February 10, 1864.

On behalf of the defendants the following facts were shown, to-wit:

A patent from the United States to Joseph Papin, dated June 15, 1826, of certain Government sectionized lands. (See p. 33 of record.) The land sued for in this suit was a part of the lands granted by said patent. The patent was founded upon an entry made by said Papin, April 28, 1826. (See pp. 49 & 50 of said record.)

By mesne conveyances it was shown that the title of said Papin, under said patent to the lands embraced in this suit, was vested in Isaac Walker, the defendant, and that actual possession thereof, with claim of title thereto, had been enjoyed by and under said Walker since before 1844.

The defendants further showed, that in November, 1799, one Joseph Brazeau, one of the oldest settlers of Upper Louisiana, petitioned the Lieutenant-Governor thereof, Charles Dehault Delassus, for a grant of land in addition to and adjoining land already had and cultivated by him in the town of St. Louis, and which embraced the land in controversy; that his petition was granted by said Lieutenant-Governor, so far as his power allowed, and the official surveyor was ordered to survey it off to him, which was afterwards done. (See p. 56 and following of record.)

That, under the first Act of Congress, passed March 2, 1805, (p. 324, vol. 2, of U. S. Stat. at Large,) organizing a commission to examine the land claims of the inhabitants of Louisiana under Spain and France, said Brazeau, filed, according to law, notice of his claims, among which was his claim to this land and said evidence thereof. (See p. 56 of record.)

His claim to this land was not, however, confirmed by said commission, but by the Act of March 3, 1811 (p. 662 of said vol.), the land of this claim was reserved from sale until the final decision of Congress thereon.

This protection from sale was continued until July 4, 1836, (excepting the short time between May 26, 1829, and July 9, 1832,) when by the act of July 4, 1836, (p. 127 of vol. 5, U. S. Stat. at Large,) this claim was confirmed to said Brazeau, or his representatives.

The facts of this case, as presented on said trial by said plaintiff, were, in substance, as follows, to-wit:

The Act of Congress of June 13, 1812, (p. 748, vol. 2, U. S. Stats. at Large,) whereby the lands of the Town of St. Louis, included in the general survey thereof, not rightfully owned or claimed by private persons, or held as commons, or reserved for military purposes, were reserved for the support of the schools of said town, not, however, to exceed in quantity one-twentieth of the lands of such survey.

The Act of Congress of January 27, 1831, (p. 435 of vol. 4 of U. S. Stat. at Large,) whereby the United States relinquished all their right, title and interest in the lands reserved for the support of schools in the State of Missouri by the said Act of June 13, 1812.

By appropriate legislation the plaintiff became empowered and entitled to realize this donation in behalf of the ancient Town of St. Louis.

In pursuance of its power, the plaintiff made demand of the Surveyor General at St. Louis to designate and set apart to it a parcel of land in the southern part of the city of St. Louis, on the ground that it was embraced within said reservation, and said Surveyor, in pursuance of said demand, without referring to the Commissioner of the General Land Office, but upon his own responsibility (see p. 110 of record), did on June 3, 1861, set it apart for the plaintiff by his survey thereof for plaintiff, numbered 407 of the series of St. Louis lands. (See p. 13 of record.) By this proceeding plaintiff obtained color of title to said land.

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The defendants further showed, that in November, 1799, one Joseph Brazeau, one of the oldest settlers of Upper Louisiana, petitioned the Lieutenant-Governor thereof, Charles Dehault Delassus, for a grant of land in addition to and adjoining land already had and cultivated by him in the town of St. Louis, and which embraced the land in controversy; that his petition was granted by said Lieutenant-Governor, so far as his power allowed, and the official surveyor was ordered to survey it off to him, which was afterwards done. (See p. 56 and following of record.)

That, under the first Act of Congress, passed March 2, 1805, (p. 324, vol. 2, of U. S. Stat. at Large,) organizing a commission to examine the land claims of the inhabitants of Louisiana under Spain and France, said Brazeau, filed, according to law, notice of his claims, among which was his claim to this land and said evidence thereof. (See p. 56 of record.)

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This protection from sale was continued until July 4, 1836, (excepting the short time between May 26, 1829, and July 9, 1832,) when by the act of July 4, 1836, (p. 127 of vol. 5, U. S. Stat. at Large,) this claim was confirmed to said Brazeau, or his representatives.

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This protection from sale was continued until July 4, 1836, (excepting the short time between May 26, 1829, and July 9, 1832,) when by the act of July 4, 1836, (p. 127 of vol. 5, U. S. Stat. at Large,) this claim was confirmed to said Brazeau, or his representatives.

In the mean time the following Acts of Congress, touching the questions in this case, were passed:

Said Act of June 13, 1812, which reserved for the support of schools of the town of St. Louis, all lands within the out-boundary thereof, "*not rightfully claimed* or owned" by any inhabitant of said town or its commons, or taken for military purposes, and not to exceed in quantity one-twentieth of all the lands within said out-boundary. It directed the U. S. Surveyor to survey this out-boundary, and the U. S. Recorder of Land Titles at St. Louis to take up and examine the land claims of the inhabitants, not disposed of by the said commission prior to the Act of 1811.

Next, the Act of May 26, 1824, (p. 52, vol. 4 of U. S. Statutes at Large,) which attempts to provide, among other things, for the determination of said land claims by the District Court of the State of Missouri.

It further provides, that all such claims, for which suit be not brought within two years, shall be forever barred, and the land thereof shall become public land, subject to the same disposition as other public lands within the same district. The time for bringing such suits was afterwards extended to May 26, 1829 (See Act of Congress approved May 22, 1828.) (May 24th, 1828)

Next, the said Act of January 27, 1831, making said reservations in behalf of schools, under said Act of June 13, 1812, of legal effect.

And, finally, the Act of July 9, 1832, (p. 565, vol. 4, U. S. Stat. at Large,) organizing another Commission to examine said claims, and under whose examination and favorable report Brazeau's claim to this land was confirmed by said Act of July 4, 1836.

The land under this confirmation was surveyed for Brazeau by the U. S. Surveyor in 1837. This survey was approved and numbered 3078. There was excluded from it under the operation of the 2d section of said Act of July 4, 1836, the land in said patent to Papin, because of its said sale to Papin by the United States. (See pp. 70 to 78 of the record.)

On the trial it was shown that this land lies within the

out-boundary lines directed to be run by the Act of 1812, and within the said survey No. 407 for the plaintiff, and the said survey No. 3078 for Brazeau and the said patent for Papin, and that said out-boundary was run in 1840.

Instructions were asked for the plaintiff and defendants, but the court refused to give the same, and of its own motion gave the following:

"The papers, documents and oral proof exhibited on the part of the plaintiff are *prima facie* evidence of the title of the plaintiff; but if the land in controversy is embraced in the tract of land claimed by Joseph Brazeau, as conceded to to him by Charles Dehault Delassus in 1799; and if Joseph Brazeau presented the said claim, embracing the land in question, for investigation, to the Board of Commissioners appointed by the Act of Congress approved March 2, 1805; and if said claim was confirmed to said Brazeau by the Act of Congress passed July 4, 1836, the plaintiff cannot recover in this suit; and the fact that the United States conveyed the same by patent to Joseph Papin in 1826, can make no difference, although the titles, so conveyed to said Papin, may be held to be a better title than that of Brazeau under the Act of 1836."

The defendants in error pray for the affirmance of said judgment, for the following reasons:

POINT 1.

The land sued for was not of the land reserved for the support of the schools of the Town of St. Louis, by the Act of June 13th, 1812.

Act of March 2, 1805, p. 324, vol. 2, Stats. at Large.
" April 21, 1806, p. 391, " "
" March 3, 1807, p. 440, " "
" Febr'y 15, 1811, p. 617, " "
" March 3, 1811, p. 662, " "
" June 13, 1812, p. 748, " "
" April 12, 1814, p. 121, vol. 3, "
" April 29, 1816, p. 328, " "
" May 26, 1824, p. 52, vol. 4, "
" May 22, 1826, p. 355, vol. 5, "
" Jan'ry 27, 1831, p. 435, vol. 4, "
" July 9, 1832, p. 565, " "
" March 2, 1833, p. 661, " "
" July 4, 1836, p. 127, vol. 5, "

These acts show the legislation operating on this case.

Strother v. Lucas, 12 Pet. Rep. p. 455.
Hammond v. St. Louis Pub. Schools, 8 Mo. Rep. pp. 74-5.
Kissell v. same, 18 How. U. S. Rep. pp. 19, 24–5.
Lafayette's heirs v. Kenton, 18 How. U. S. Rep. pp. 197-9.
St. Louis Pub. Schools v. Walker, 40 Mo. Rep. p. 398.
West v. Cochran, 17 How. U. S. Rep. pp. 413–15.
Menard's heirs v. Massey, 8 How. U. S. Rep. pp. 309–10.

These cases show that the Government necessarily had and did, in fact, retain, in said Act of 1812, the power to decide the rightfulness of claims.

LeDoux et al. v. Black et al., 18 U. S. Rep. p. 473, shows that Government could sell any of these public lands, so long as it was not duly and specifically set apart to the schools.

## ARGUMENT.

The land sued for *was "rightfully claimed"* by the representatives of Joseph Brazeau when the Act of June 13, 1812, was passed, and therefore was not reserved for the support of schools under said Act. The Act of January 31, 1831, operated only on the lands reserved by said Act of 1812 at the time said Act of 1812 was passed.

In 1806, due notice of Brazeau's claim was filed for confirmation, as required by law.

By sec. 8 of the Act of March 3, 1811, (p. 662, vol. 2, U. S. Stat. at Large) the land of such a claim is reserved from sale until the final decision of Congress thereon.

This reservation was in existence when the said Act of 1812 was passed, and continued, with only one brief interruption, until July 4, 1836, when by the Act of Congress of

this date (p. 127, vol. 5, U. S. Stat. at Large), this claim was confirmed to said Brazeau's representatives.

This was the final decision of Congress on this claim meant in said Act of 1811—Ham vs. State of Mo. 18 How. U. S. Reps. p. 134.

This decision proved Brazeau's claim to have been "*rightful*," and therefore not subject to said Act of 1812 in behalf of schools. For, it was the duty of the Government, under the treaty of purchase with Louisiana, to protect all private claims, and, from the nature of the claims, not being of any standing in courts, it was the sole and exclusive power of the Government to decide which were rightful, and to direct the mode of the determination thereof. All incomplete dealings and transactions, and obligations of the Government, relative to the lands within said purchase, were subject to this duty and power.

West vs. Cochran, 17 How. U. S. Rep. pp. 413–415.

Lafayette's heirs vs. Kenton, 18 How. U. S. Rep. p. 199.

This power was reserved in said Act of 1812.

Hammond vs. Schools, 8 Mo. Rep. p. 75.

Kissell vs. Schools, 16 Mo. Rep. 579.

Kissell vs. Schools, 18 How. U. S. Rep. p. 25.

The fact that, when the Act of January 27, 1831, (p. 435, vol. 4, U. S. Stat. at Large,) in favor of the schools was passed, the further prosecution of the said claim of Brazeau was barred under the Act of May 26, 1824, (p. 52, vol. 4, U. S. Stat. at Large,) does not prove that the claim was not "*rightful.*" This, a statute of limitations, never pretends to do, or can do. The implication from this Act seems rather to be, that these claims were rightful, but too stale, from the negligence of their owners, to be longer suffered to obstruct the sales of their lands by Government. For, the Act provides, that the land of these barred claims shall, under the bar, *become public* lands, not lands subject to school reservations, but subject to the same disposition as other public lands in their district. (See sections 5 and 7 of said Act of 1824.)

Besides, this bar was raised, by paramount and competent authority, by the Act of July 9, 1832, (p. 565, vol. 4,) providing for a new Board of Commissioners for considering these claims, and, under their report of its merits, this claim was confirmed by said Act of July 4, 1836. Yet, before the title to any specific land could be vested, in behalf of the schools, out of the lands within the true reservation of the said Act of 1812, certain conditions precedent had to exist, viz:

1st. The out-boundary, provided for by said Act of 1812, had to be run, and all the lands within it surveyed to secure the requisite legal certainties of location *within* the village, and of the quantity of the *one-twentieth* thereof.

2d. The land had to be designated and set apart to the schools by the U. S. Surveyor.

3d. It must not make the whole quantity set apart exceed said one-twentieth of all the land within said out-boundary.

4th. Nor, be of lands rightfully owned, or claimed by individuals, or commons.

5th. Nor, be of lands reserved for military purposes.

Yet not one of these conditions existed when the Act of January 27, 1831, was passed; or, when said Act of July 4, 1836, was passed, and therefore the Government had not be-

come at this time bound by any completed divestment of title in favor of the schools, and the schools were, therefore, still subject to the power of the Government to determine claims, whether "rightful" or not, and confirm those decided to be "rightful" by it—Menard's heirs vs. Massey, 8 How. U. S. pp. 309 and 310.

This confirmation was, therefore, valid and operative, for this specific land, as against the schools, notwithstanding the protection secured in said Act of July 4, 1836, for the sales of lands, within said confirmation, made theretofore by the United States.

But this confirmation was not valid as against the sale and grant of this specific land to Papin, because this sale *was* within said protection.

Menard's heirs vs. Massey, 8 How. U. S. Rep. pp. 308 and 310.
4 Idem pp 462 Les Bois vs Bramell.
Sarpy vs. Papin, 1 Mo. Rep. pp. 504 and 505.
Papin vs. Hines, 23 Mo. Rep. p. 280.
Cabanne vs. Walker, 31 Mo. Rep. 286.

Finally, suppose said out-boundary had been surveyed in 1812 immediately after the enactment of said Act of 1812 with the benefit added thereto of the said Act of 1831, could this land have been set apart for the schools in the face of Brazeau's said claim, notice thereof and of said Act of 1811? If not, it could never be while the claim had life, and certainly it could never be after it had been decided rightful by authority paramount over all.

POINT 2.

The sale and grant to Papin, in 1826, by the United States, if irregular, was assailable therefor only by the United States and the representatives of Brazeau. But, as against this, the sale is protected and ratified by said Act of July 4, 1836.

Hoofnagle vs. Anderson, 7 Wheat. Rep. 215.

Sarpy vs. Papin, 7 Mo. Rep.

Menard's heirs vs. Massey, 8 How. U. S. Rep. pp. 308 and 310.

The alleged ground of irregularity is, that it was reserved from sale when it was sold to Papin—reserved, however, not in behalf of the schools, but in behalf of the Brazeau claim. It was not reserved under the Act of 1812 for schools, because Brazeau's claim to it has been decided "*rightful*" by paramount authority. Besides, a mere voluntary reservation does not prevent a selling contrary thereto.

Hammond vs. Schools, 8 Mo. Rep. p. 74.

State vs. Ham, 19 Mo. Rep. p. 601.

A. TODD, and
GLOVER & SHEPLEY,
*for Defts. in Error.*